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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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IN THE MATTER OF:

CC DOCKET NO. 93-161

CLARK-BADER, INC., d/b/a )  
TMC LONG DISTANCE, )  
Complainant, )  
V. )  
PACIFIC BELL, )  
Defendant. )

DATE OF CONFERENCE: September 21, 1993  
PLACE OF CONFERENCE: Washington, D. C.

VOLUME: 1  
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FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

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CC Docket No. 93-161

The above-entitled matter came on for a Prehearing Conference pursuant to Notice before Judge Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., 20554, in Courtroom No. 4, on Tuesday, September 21, 1993, at 8:30 a.m.

APPEARANCES:

On behalf of Clark-Bader, Inc.:

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(202) 342-6795

On behalf of Pacific Bell:

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Washington, D. C. 20004  
(202) 383-6423

1 On behalf of FCC Common Carrier Bureau:

2 THOMAS D. WYATT, Esquire  
3 FCC Common Carrier Bureau  
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Conference Began: 8:30 a.m.	Conference Ended: 10:00 a.m.

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## P R O C E E D I N G S

(8:30 a.m.)

JUDGE MILLER: This is the date for the Prehearing Conference in the Clark-Bader/Pacific Bell 208 proceeding, Common Carrier Docket 93-161. We're here today to exchange a direct case -- for hearing and to otherwise firm this case up for hearing. Before we get started, let's take some notices of appearance. For Clark-Bader, Inc., doing business as TMC Long Distance, Complainant?

MR. HELEIN: Thank you, Your Honor. Charles H. Helein of the firm of Galland, Kharasch, Morse & Garfinkle, and I'm accompanied by Donald H. Manley of the same firm and Richard Waysdorf as of counsel.

JUDGE MILLER: All right. Appearances have also been noted, have they not, from Julia Waysdorf, Mark Lindberg (phonetic sp.) -- I guess that's the other two.

MR. HELEIN: And Michael Caruthers (phonetic sp.) of, of Galland Kharasch, Your Honor, and --

JUDGE MILLER: Okay.

MR. HELEIN: -- that is correct.

JUDGE MILLER: Okay. For Pacific Bell, the Defendant?

MS. WOOLF: Nancy Woolf, for Pacific Bell.

JUDGE MILLER: All right.

MS. WOOLF: Also appearing with me today is Celia Nogales from our Washington office.

1 JUDGE MILLER: Okay. Written appearance has been  
2 entered by James Pietottiel (phonetic sp.) too, has it not?

3 MS. WOOLF: Yes.

4 JUDGE MILLER: All right. Ms. Woolf, what -- have  
5 you cleared your, the spelling of your last name with the  
6 reporter?

7 MS. WOOLF: It is W O O L F.

8 JUDGE MILLER: All right. For the Acting Chief,  
9 Common Carrier Bureau?

10 MR. WYATT: Thomas Wyatt, Your Honor.

11 JUDGE MILLER: All right. Yes? Oh, okay. Now, the  
12 Prehearing Order in this case was released back on June 30,  
13 1993, and that's FCC 93M-426, and let's use that as our  
14 conference agenda. And if there's something that we don't  
15 cover that you feel we should cover, feel free to bring it up  
16 either at the end of the conference or when we reach the  
17 appropriate paragraph in the Prehearing Order.

18 Before we, before we begin, there are two things I'd  
19 like to cover as a preliminary matter. One is the -- there is  
20 one outstanding interlocutory pleading that I have not --  
21 according to my records, there's one outstanding interlocutory  
22 pleading I have not yet ruled on. Action on any Opposition or  
23 comments on that aren't due until the 23rd, so that's the  
24 reason there's no action been taken on it.

25 Secondly, I think we ought to, at this early

1 | juncture, Mr. Wyatt, gather a record indication of what the  
2 | Bureau's participation is going to be in this proceeding.

3 |           MR. WYATT: Yes, Your Honor. The Bureau does not  
4 | anticipate any active participation in the proceeding at this  
5 | juncture. However, we, we do intend to, to perform a monitor-  
6 | ing function, if you will, and I, I suppose, our interest in  
7 | and participation could, could change, depending on how this  
8 | case develops.

9 |           JUDGE MILLER: Well, let's, let's, let's, let's see  
10 | if we can put a little flesh on what you just said, Mr. Wyatt.  
11 | You don't have any exhibits to exchange, do you?

12 |           MR. WYATT: No, Your Honor.

13 |           JUDGE MILLER: You -- do you intend to participate  
14 | in the Evidentiary Admissions Session?

15 |           MR. WYATT: No, we do not.

16 |           JUDGE MILLER: You don't intend to cross-examine  
17 | witnesses?

18 |           MR. WYATT: No, we, we do not.

19 |           JUDGE MILLER: Now, contingent item that we have not  
20 | yet covered, the position of any Pac Bell motion for immunity.  
21 | I will tell you now that I would, I would appreciate the  
22 | Bureau's views if, if Pac Bell renews that motion before I act  
23 | on it. I would -- I think -- I'm trying to make it clear in  
24 | orders why I, I, I would like the Bureau's participation.  
25 | Now, putting that aside, you don't -- the -- if I understand

1 your role, you don't intend to file any Proposed Findings and  
2 Conclusions?

3 MR. WYATT: No, Your Honor.

4 JUDGE MILLER: And if you decide that there are  
5 matters which the Bureau needs to participate in, to protect  
6 the process, you're going to give us some -- a little advance  
7 notice, aren't you?

8 MR. WYATT: Certainly, Your Honor. We, we, we  
9 certainly will. And I, I have no qualms making that represen-  
10 tation here today.

11 JUDGE MILLER: All right. Mr. Helein, you want to  
12 be heard?

13 MR. HELEIN: Yes, if it, if it pleases the Court,  
14 for just a second. Just a few brief comments. I just want to  
15 note for the record as this develops that the, the Complainant  
16 takes a slightly different view of the Bureau's obligation.  
17 208 of the Act does indicate the Commission has a duty to  
18 investigate these complaints as well as the fact that the  
19 Complainant has to go forward with the burden of proof. We  
20 think the Bureau's present position that they do not intend to  
21 participate in any way is not consistent with that.

22 JUDGE MILLER: It's not in any way, Mr., Mr. Helein.  
23 He did not say he did not intend to participate in any way.  
24 He said he's going to monitor it and he said he may get invol-  
25 ved if there's some questions that he feels require the



1 protection of the, of the Commission processes. That's what  
2 you meant by in any way, didn't you?

3 MR. HELEIN: What I meant is I was reflecting on his  
4 statements that he does not intend to cross-examine the wit-  
5 nesses.

6 JUDGE MILLER: Right. Okay.

7 MR. HELEIN: And, so, I think that that is something  
8 that I wanted noted on the record that our view is, is that  
9 there is some obligation on the Commission's part under 208 of  
10 the Act to do and take some action to investigate these com-  
11 plaints in the public interest. The case involves not only  
12 the private rights of the Complainant and the Defendant, but  
13 also the public interest is represented by the policy of equal  
14 access.

15 JUDGE MILLER: All right. Do you --

16 MR. WYATT: Your Honor, may I respond to that, just  
17 very briefly?

18 JUDGE MILLER: If you need to.

19 MR. WYATT: I mean, there's a long line of cases.  
20 The Commission has made clear over and over again that it has  
21 considerable discretion in the matter in which it, it, it  
22 carries out that 208 function. In fact, the Commission has  
23 promulgated a number of rules which, which set out parameters  
24 of proceedings and, and, and provide a, a measure of  
25 discretion in terms of how, how the Bureau investigates a

1 so-filed complaint.

2 JUDGE MILLER: I, I, I don't know anything -- I  
3 don't know what -- to what extent you people investigated. I,  
4 I've been notified in the Prehearing Order, which took you  
5 four years. But, in any event, there's no dispute. Mr.  
6 Helein has placed, placed a statement of position on the  
7 record and that's --

8 MR. WYATT: That's --

9 JUDGE MILLER: But that's about as far as we're --  
10 we are right now, Mr. Wyatt.

11 MR. WYATT: Yes, Your Honor.

12 MR. HELEIN: Your Honor?

13 JUDGE MILLER: Yeah?

14 MR. HELEIN: One -- two -- it's Helein.

15 JUDGE MILLER: Oh, it's Helein. Helein. All right.

16 MR. HELEIN: And --

17 JUDGE MILLER: Helein.

18 MR. HELEIN: One other statement, Your Honor. On  
19 the question of the Pending Motion on Immunity --

20 JUDGE MILLER: There is no pending Motion on Immu-  
21 nity.

22 MR. HELEIN: All right.

23 JUDGE MILLER: Let's, let's --

24 MR. HELEIN: But the, the issue --

25 JUDGE MILLER: -- be clear about that.

1 MR. HELEIN: All right. Thank you, Your Honor. The  
2 issue of immunity, I would just like to note at the outset  
3 that in the event that that becomes an active issue, that has  
4 -- we have never had any opportunity to dis-- to conduct any  
5 discovery with respect to that issue, either in  
6 predesignated --

7 JUDGE MILLER: If I add, if I add -- if I am called  
8 upon to add issue then add issues, I always hold -- make, make  
9 room for discovery and whatever you need to do to prepare for  
10 trial on that issue.

11 MR. HELEIN: Thank you, Your Honor.

12 JUDGE MILLER: I, I think that -- I think my -- I  
13 will bring up a point at this juncture, Mr. Helein.

14 MR. HELEIN: Thank you.

15 JUDGE MILLER: Mr. Wyatt, in the event that, that  
16 Pac Bell renew-- renews its motion, which is where we are  
17 right now, the -- and you have -- and you take a position, I  
18 think -- it is my belief that, that if there's a request for  
19 added issues that those issues are going to have to be framed  
20 in a unique way and I -- and for this reason: I doubt if the  
21 Bureau has the -- if the -- this Commission has the authority  
22 to lift the Certificate of Public Convenience and Necessity  
23 that was issued by the State of California. In other words,  
24 I, I'm not sure that we don't have a long-distance reseller on  
25 our hands that we don't have any -- that we have a certain

1 amount of control over, but it isn't to the extent of lifting  
2 their license.

3 MR. WYATT: Well, Your, Your Honor, if, if I could  
4 respond, respond to that, I think there, there, there is some  
5 implications under Section 214 of the Act under which a car-  
6 rier such as Mr. Helein's client operate pursuant to a blanket  
7 authority. I suppose if, if a question evolved as to, to  
8 character qualifications of -- of a principal of the, of the  
9 Complainant, the, the Bureau may have some views in, in terms  
10 of, in terms of, of, of -- within my understanding of --

11 JUDGE MILLER: Well --

12 MR. WYATT: -- Section 214, anyway.

13 JUDGE MILLER: Well, let me say this, that, that I'm  
14 not, I'm not at this juncture saying that you don't have  
15 jurisdiction to ask for and, and, and -- or support a, a  
16 forfeiture provision for, for a carrier that is under our  
17 jurisdiction to that extent. But there's no -- they don't  
18 have to get a 214 from us, do they?

19 MR. WYATT: No, Your Honor, I -- the -- it -- the,  
20 the -- I suppose there's a -- there's, there's a long line of  
21 decisions that, that discuss how, how the, how the  
22 Commission's regulatory --

23 JUDGE MILLER: Deregulatory --

24 MR. WYATT: Well --

25 JUDGE MILLER: -- is, is the --

1 MR. WYATT: --

2 JUDGE MILLER: -- proper word, isn't it, Mr. Wyatt?

3 MR. WYATT: I, I'll concede that for, for the, for  
4 the moment, Your Honor, but, but certainly there are an equal  
5 number of cases that make it clear that this Commission re-  
6 tains some of -- some jurisdiction over, over the activities  
7 of, of, of carriers who operate under that, under that blanket  
8 authority.

9 JUDGE MILLER: Well, it -- we'll cross, we'll cross  
10 -- you know, we'll cross the bridge when we come to it if we  
11 come to it.

12 MR. WYATT: Yes.

13 JUDGE MILLER: But I just thought it would be fair  
14 to you -- when I said that I would want your views, I thought  
15 it would be fair to let you know that my preliminary research  
16 indicates that we don't -- this Commission doesn't have a, a  
17 lot of authority over these long-distance resellers.

18 MR. WYATT: I understand your concerns, Your Honor.  
19 If I can make, make one point, I -- and I want to be very  
20 clear about this. Again, the Bureau view at this junction of  
21 the proceeding, that we, we don't intend to actively partici-  
22 pate. To the extent that an issue evolves concerning the,  
23 the, the, the qualifications of, of Mr. Helein's client, I  
24 suppose the Bureau might have something to say. But, again,  
25 I, I don't want to, to send any, any, any signals at this

1 | juncture, at this juncture, we, we --

2 | JUDGE MILLER: Well --

3 | MR. WYATT: -- we anticipate no active participa-  
4 | tion. And we'll have to, we'll have to wait and see how the,  
5 | how the evidence develops.

6 | JUDGE MILLER: I think, I think that, that the point  
7 | I, I'm making here at this juncture, Mr. Wyatt, is that, as  
8 | far as I'm concerned, there is no -- despite what Mr. Helein  
9 | told the Review Board, despite that, I have not prejudged the  
10 | character issue and I will only go into it if there is a  
11 | proper request made that it be added to this proceeding. Now,  
12 | to the extent that there may be evidence develop that overlaps  
13 | that would go to show that there is no liability on the part  
14 | of Pac-- Pacific Bell because of the testimony of two immu-  
15 | nized witnesses, that's a matter that, that certainly is  
16 | relevant to the issues as designated. But as far as I'm  
17 | concerned, and despite Mr. Helein's contention with the Review  
18 | Board, I'll call it a contention, that, that I have prejudged  
19 | it, I have not and I will only judge it if and when it's  
20 | presented to me. Is that, is that clear to everybody? Mr.  
21 | Wyatt?

22 | MR. WYATT: I believe understand your view --

23 | JUDGE MILLER: Mr. Helein?

24 | MR. HELEIN: Yes.

25 | MS. WOOLF: Yes.

1 JUDGE MILLER: Ms. Woolf? All right. Now, you  
2 know, having said that, I also said that I wasn't being a  
3 bureaucrat in evading the problem, but if it comes to me I'll,  
4 I'll face it.

5 All right. Is there anything -- other preliminary  
6 matters you wish to bring up, Mr. Helein?

7 MR. HELEIN: No, thank you, Your Honor.

8 JUDGE MILLER: Ms. Woolf, any preliminary matters?

9 MS. WOOLF: No.

10 JUDGE MILLER: All right. Let's go to our Prehear-  
11 ing Order. And at paragraph two of the Prehearing Order, it  
12 deals with appearances. My records show that both of you have  
13 submitted appropriate written notice of appearance. Is that  
14 what your records show, Mr. Helein?

15 MR. HELEIN: Yes, Your Honor.

16 JUDGE MILLER: Ms. Woolf?

17 MS. WOOLF: Yes, including the one I received yes-  
18 terday from Mr. Helein on his supplemental notice.

19 MR. HELEIN: Oh, yes. I -- that's, that's Mr.  
20 Waysdorf.

21 JUDGE MILLER: Paragraph three through eight of the  
22 Prehearing Order deal with the clarification of issues.  
23 Paragraph three is simply the, the reminder of where the  
24 burden of proceeding and the burden of proof lie and it sets  
25 the order of procedures. Do you have any problem with that

1 paragraph, Mr. Helein?

2 MR. HELEIN: No, Your Honor.

3 JUDGE MILLER: Ms. Woolf?

4 MS. WOOLF: No.

5 JUDGE MILLER: Okay. Now, as -- well, the -- we, we  
6 could get to it now or we could get to it when we, when we  
7 start to talk about our direct cases, but you have filed a  
8 formal complaint, and I assume that that's going, going to be  
9 at least an official notice taken of that formal complaint,  
10 will there not?

11 MR. HELEIN: Yes, Your Honor. We actually have  
12 submitted it as an exhibit, I believe.

13 JUDGE MILLER: Okay. And the same goes with you,  
14 Ms. Woolf, for the answer?

15 MS. WOOLF: Yes.

16 JUDGE MILLER: And, and the reply too, Mr. --

17 MR. HELEIN: Yeah.

18 JUDGE MILLER: All right. Paragraph four of the  
19 Prehearing Order spells out Pac Bell's procedural burdens and  
20 instances where it has raised affirmative defenses. Now, the  
21 Prehearing Order only speaks in terms of one such affirmative  
22 defense, namely that all the other ICs experienced difficulty  
23 with the equal access which is in question and not just TMC.  
24 But in your March 31, 1989, Answer, you outline seven affirma-  
25 tive defenses, and so your obligation, insofar as you have a



1 | burden, goes to all seven of those defenses. You understand  
2 | that?

3 | MS. WOOLF: That's correct. Yes.

4 | JUDGE MILLER: Okay. Paragraph five of the Pre-  
5 | hearing Order deals with the necessity of providing necessary  
6 | background information so that the Review Board and ultimately  
7 | the Commission will have a clear picture of exactly what's  
8 | occurred, and on that point you can also see an Interlocutory  
9 | FCC 93M-513 released August 10, 1993, in which I point out  
10 | that that's what we need. Is there any problem that you're  
11 | having with that paragraph, Mr. Helein?

12 | MR. HELEIN: In co-- some senses, Your Honor. Let  
13 | me, if I can, in paragraph five go through the subparagraphs  
14 | and just tell you where our status is, if I may?

15 | JUDGE MILLER: Okay.

16 | MR. HELEIN: On the description of the effectively  
17 | injured and equal access tandem, at this stage we have submit-  
18 | ted in our direct case numerous exhibits which address that,  
19 | and from the records that we've been able to obtain from Pac  
20 | Bell would say that our approach and our knowledge at this  
21 | stage is contained in those exhibits, and those are Exhibits  
22 | 35 through 48 of TMC.

23 | Of course, Pac Bell will be providing its access  
24 | tariffs for the, for the hearing.

25 | And, finally, on the agreement on the excessive

1 postdial delay and blockage, I received a proposal from coun-  
2 sel for Pac Bell with which I, I do not agree. I have pre-  
3 pared my own proposed definitions. I do agree with Pacific  
4 Bell's counsel in one respect, that the definition of exces-  
5 sive postdial delay is probably something that will need to  
6 await the production of evidence in this hearing.

7           Insofar as a generalized deshun-- definition of  
8 postdial delay and block calls, I have provided for that and  
9 would be happy to submit it to the Parties and to His Honor,  
10 or we could await -- depending upon what your discretion dic-  
11 tates. On block calls, Pac Bell's proposed definition really  
12 described causes of block calls, not really a definition of  
13 block calls. So, I have provided -- or can provide our, our  
14 views on respect to that definition. But we have not been  
15 able to agree to those definitions at this time.

16           JUDGE MILLER: Okay. Then, then, then my, my sug-  
17 gestion is this, then. If you have not agreed on a definition  
18 of what constitutes block calls or excessive postdial delay  
19 and you have made a definition, have somebody prepared to  
20 defend your definition on the stand and you will have somebody  
21 prepared to defend your version and your definition on the  
22 stand. That's the best we can get out of that I think.

23           Now, are the, are the tariffs part of your direct  
24 case?

25           MS. WOOLF: I have the tariffs over here.

1 Unfortunately, it's six volumes. So, I have not incorporated  
2 it.

3 JUDGE MILLER: Okay.

4 MS. WOOLF: I -- what I've done is into my direct  
5 case I have incorporated what I feel are the relevant sections  
6 and I have put those in my binder.

7 JUDGE MILLER: All right. But the --

8 MS. WOOLF: But in terms of the complete set, I will  
9 submit that to you.

10 JUDGE MILLER: All right. Now, Mr. Wyatt, let me  
11 impose on you. Long before Tom Wyatt was ever with the Common  
12 Carrier Bureau I had occasions to hear Common Carrier cases.  
13 And lo and behold, I found a very disturbing point. Really,  
14 the person that ought to have these tariffs in the room is the  
15 Bureau, because that is the, the official tariff. You under-  
16 stand me?

17 MR. WYATT: Yes, Your Honor. I understand.

18 JUDGE MILLER: But in, in the course of two or three  
19 different proceedings, I fi-- I found that the carrier's  
20 records were more accurate than the official records and the  
21 Bureau. I, I don't know exactly how to -- how else to put  
22 that, but, but that was, that was a problem in the old days,  
23 and, so, I've always been willing to accept the carrier's  
24 tariffs as being up-to-date and thorough. Now, if you want to  
25 take a look at those tariff pages or have your expert come

1 over here and look at those tariff pages to make sure that  
2 what Pac Bell has given us is, is accurate, feel free to do  
3 so.

4 MR. WYATT: Yes, Your Honor, we certainly will. But  
5 I, I, I, I've -- I feel certain that, that Mr. Helein will,  
6 will be able to point out any, any questions. And, certainly,  
7 to the extent that a question arises about the, about the --  
8 about a tariff, we will certainly do what we, we can to --

9 JUDGE MILLER: All I, all I -- the point I'm making  
10 to you is I'm -- I'm again going back. I'm from the old  
11 school. Despite deregulation, Mr. Wyatt, tariffs are still  
12 important to me. Always have been. They were in Telstar, if  
13 you remember.

14 MR. WYATT: I certainly do.

15 JUDGE MILLER: And, as a consequence, the Review  
16 Board and, and the -- if the Review Board and the -- ultimate-  
17 ly the Commission want to check tariffs, I hope that they're  
18 not going to have any difficulty, that, that, that, that  
19 they're not going to have to go out to Montgomery Street to,  
20 to, to, to see the tariffs, you see.

21 MR. WYATT: Your Honor, if, if I can make a point  
22 along that line?

23 JUDGE MILLER: Yeah.

24 MR. WYATT: Pacific Bell has, has made very clear --  
25 I mean, we an-- we anticipate a, a -- the submission of, of

1 voluminous tariff pages and we, we are certainly prepared to,  
2 to check that -- the Bureau files. And to the extent that,  
3 that we have questions, Pacific Bell has made it very clear  
4 that they're willing to provide us with, with access to any,  
5 to any pages which, which, which may raise a question.

6 JUDGE MILLER: Okay. Everything's satisfactory on  
7 the tariff question with you, Mr. Helein?

8 MR. HELEIN: Yes, except that given Your Honor's  
9 comments I would like to ask -- Pac Bell requested whether or  
10 not we wanted it. Knowing the size of the tariffs, we indi-  
11 cated that we would only request a first -- the index of the  
12 tariffs so that we wouldn't have to go through a volume. So,  
13 I understand Ms. Woolf's comments today is, is that she will  
14 designate certain pertinent sections, and if we could get  
15 copies once she has done that of those sections she designates  
16 relevant to this case we'd like to have those provided also.

17 JUDGE MILLER: Well, I think, I think, I think  
18 there's another thing too. We -- I want these tariffs in this  
19 room. Yeah, I know. So that if during your examination or  
20 cross-examination, whatever, you have need to make reference,  
21 they're here for you and available. The same goes with Ms.  
22 Woolf.

23 MR. HELEIN: Yes, Your Honor. Thank you.

24 JUDGE MILLER: That's, that's the major concern that  
25 I have --

1 MR. HELEIN: I agree, Your Honor.

2 JUDGE MILLER: -- that you have this, you have this  
3 material present. And that -- and, and, you know, this  
4 doesn't seem like that kind of a case, but I happened to have  
5 tried 208 cases many, many years ago back in the early '60s.  
6 And, in that case, would, would -- turned on definitions and  
7 materials contained in tariffs. And it ended up there was a  
8 dispute as to what a loop and what was an extension to a loop,  
9 and the loop was being sold for \$6.00 and the extension was  
10 being sold for 3.50. And, so, there was a \$2.50 difference,  
11 and once we determined what it was, then -- but we had to look  
12 at the tariffs --

13 MR. HELEIN: Yes, Your Honor.

14 JUDGE MILLER: -- to get the basics. All right.  
15 So, we go onward from here. Do you have any comments regard-  
16 ing paragraph five, Ms. Woolf, on the, on the background  
17 material there in A, B, and C?

18 MS. WOOLF: No. What we've done for part A on the  
19 background is I've incorporated that into the testi-- you  
20 know, it's incorporated into the testimony we're submitting.  
21 And, as I said, the tariff pages that I believe are relevant  
22 to the issue are also incorporated within the testimony I'm  
23 submitting. And then we'll, of course, you know, if you want  
24 me --

25 JUDGE MILLER: I, I un--

1 MS. WOOLF: -- to retain these and just bring them  
2 back here on the day of the hearing, or if you want to keep  
3 them, whatever, this is the set from '85 to '88. So, we have  
4 it.

5 JUDGE MILLER: Okay. This, this, this has the --  
6 well, what is it they call it, the amended pages, you know,  
7 the --

8 MS. WOOLF: Yes. In fact, it's, it's rather cum-  
9 bersome to use because for every section every single page of  
10 the tariff has multiple iterations as it's changed over the  
11 years.

12 JUDGE MILLER: I will make this statement to you.  
13 I, I once gave a -- was called upon to give a brief talk to  
14 the seminar and, and I made essentially this statement:  
15 Tariffs are vital documents in Common Carrier law. They're  
16 boring. They're cumbersome. They're complex and difficult to  
17 understand. But, buddy, that's where the money is. And that  
18 was the subject of my comments that day.

19 All right. Let's move on then. Paragraph six  
20 spells out that this is a nonbifurcated case and the reason, I  
21 think it was never given, because for awhile it looked like  
22 the Bureau was willing to have that bifurcated case, and the  
23 reason that it's nonbifurcated is because I see an overlap of  
24 evidence, the deal with, with both the question of liability  
25 and the, and the deal with the damages. And there's no sense

1 in us spending days and days haggling over whether it's in one  
2 or in the other when what we'll do is we'll just get it out.  
3 If it's relevant to one, that it's, it's in evidence. Any  
4 problems with paragraph six, Mr. Helein?

5 MR. HELEIN: No, Your Honor.

6 JUDGE MILLER: Ms. Woolf?

7 MS. WOOLF: No.

8 JUDGE MILLER: All right. Paragraph seven of the  
9 Prehearing Order is the ruling that Pacific Bell's Motion for  
10 Granting Immunity was premature, and I've tried to clarify the  
11 thrust of that ruling, but in subsequent clarifications and  
12 memorandums. More specifically, FCC 93M-45, released July 23,  
13 1993, and FCC 93M-509 released August 9, 1993. Any difficulty  
14 understanding the thrust of that paragraph, Ms. Woolf?

15 MS. WOOLF: No. We will renew it when we believe  
16 it's appropriate and when it's --

17 JUDGE MILLER: Okay.

18 MS. WOOLF: -- been put into issue.

19 JUDGE MILLER: Mr. Helein?

20 MR. HELEIN: That's understood, Your Honor. Thank  
21 you.

22 JUDGE MILLER: Since -- and one -- I think it's  
23 clearly that, that -- so, your position is, is that -- is your  
24 position the same as it was when you went be-- raised it with  
25 the Review Board that I've already judged -- prejudged this



1 | issue, Mr. Helein?

2 |           MR. HELEIN: I think, Your Honor, that that's -- I  
3 | guess my response at this stage would be irrelevant. I had,  
4 | in my opinion, evidence that this issue which I considered to  
5 | be bogus from the beginning about falsification of records has  
6 | twisted this case, and I believe that any allegation of that  
7 | nature which is, unfortunately, introduced without any ability  
8 | to attack it necessarily creates an impression in anyone.

9 |           JUDGE MILLER: Well. You -- if you understand my  
10 | position, as far as I'm concerned the slate's clean --

11 |           MR. HELEIN: That's --

12 |           JUDGE MILLER: -- at this juncture.

13 |           MR. HELEIN: -- comforting to know, Your Honor. I  
14 | am proceeding on that basis.

15 |           JUDGE MILLER: And that's, that's the way it is with  
16 | me. But if it's raised, you will get your chance to respond  
17 | to it and I will, will -- I'll rule. That's what they pay me  
18 | for.

19 |           MR. HELEIN: Yes, Your Honor.

20 |           JUDGE MILLER: I will say this. I think there is,  
21 | there is one, there is one point that may need to be addressed  
22 | that I'm not -- maybe it was -- it might have been well-  
23 | addressed over at -- in the -- at the Bureau level, but I  
24 | didn't want that mountain of papers, you see, and so I -- I'm  
25 | -- I will make the statement now. I am aware that the two